

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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FRED LEE and ANNE LEE,

Plaintiffs,

vs.

UNION MUTUAL FIRE INSURANCE COMPANY,

Defendant.

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**STIPULATED DAMAGES  
SETTLEMENT**

Case No.: 1:20-cv-03191-  
MKB-PK

WHEREAS, on December 3, 2021, Plaintiffs FRED LEE and ANNE LEE (“Plaintiffs”) filed a motion for an Order granting Plaintiffs summary judgment on Plaintiffs’ breach of contract claim against Defendant UNION MUTUAL FIRE INSURANCE COMPANY (“Defendant” or “Union Mutual”);

WHEREAS, on December 8, 2021, Union Mutual filed a cross-motion for summary judgment against Plaintiffs on Plaintiffs’ breach of contract claim, and further, sought by its cross-motion summary judgment against Plaintiffs on Plaintiffs’ New York General Business Law §349 claim;

WHEREAS, pursuant to an August 16, 2022 Memorandum and Order the Court granted Plaintiffs’ motion for summary judgment as to their breach of contract claim, denied Union Mutual’s cross-motion for summary judgment as to Plaintiffs’ breach of contract claim, and granted Union Mutual’s motion for summary judgment as to Plaintiffs’ New York General Business Law §349 claim, thereby dismissing Plaintiffs’ New York General Business Law §349 claim;

WHEREAS, Union Mutual intends to seek appellate review of those parts of the Court’s

August 16, 2022 Memorandum and Order that granted summary judgment to Plaintiffs as to Plaintiffs' breach of contract claim and denied Union Mutual's motion for summary judgment as to Plaintiffs' breach of contract claim;

WHEREAS the parties, without prejudice to their rights to appeal the Court's August 16, 2022 Memorandum and Order, wish to avoid the necessity of a damages trial by stipulating to the amount of Plaintiffs' damages on the Plaintiffs' breach of contract claim;

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs and Defendant, that Plaintiffs' damages on the Plaintiffs' breach of contract claim shall be set in the principal sum of \$122,441.00, plus interest, and this principal sum of \$122,441.00 is inclusive of the Plaintiffs' building damage claim and loss of rents claim and all costs and disbursements; and it is further

HEREBY STIPULATED AND AGREED, by and between Plaintiffs and Defendant, that Plaintiffs are entitled to judgment against Defendant in the amount of \$122,441.00, plus pre-judgment interest in the amount of \$26,568.02, for a total of \$149,009.02, and further, that Plaintiffs have no entitlement to consequential damages or attorney's fees because the Court has granted Union Mutual's motion for summary judgment as to Plaintiffs' New York General Business Law §349 claim thereby dismissing Plaintiffs' New York General Business Law §349 claim, and further, that Plaintiffs will not seek to enforce their judgment against Defendant on Plaintiffs' breach of contract claim until thirty days after all appellate rights are exhausted or otherwise abandoned or withdrawn, and further, that Defendant will not seek to recover from Plaintiffs or anyone else pursuant to Rule 39 of the Federal Rules of Appellate Procedure or otherwise any costs of Defendant's appeal; whereby it is

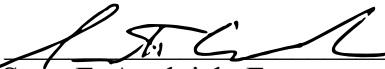
ORDERED, ADJUDGED and DECREED by the Court that the motion for summary judgment of the Plaintiffs FRED LEE and ANNE LEE on Plaintiffs' breach of contract claim

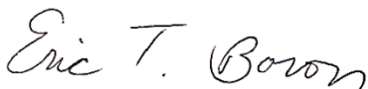
against Defendant is granted, the motion of Defendant UNION MUTUAL FIRE INSURANCE COMPANY for summary judgment against Plaintiffs as to Plaintiffs' breach of contract claim is denied, and Defendant UNION MUTUAL FIRE INSURANCE COMPANY's motion for summary judgment against Plaintiffs seeking dismissal of Plaintiffs' New York General Business Law §349 claim is granted, all of which reflects and represents the Court's express and unmistakable intent that the Judgment in favor of Plaintiffs and against Defendant in the amount of \$149,009.02 granted by this Court on December 1, 2022 is intended to be the Court's final act in this case and subject to the rights of appeal referenced above, because there are no further claims of the parties for the Court to rule upon.

Dated: December 1, 2022

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SO ORDERED:  
s/ MKB 12/5/2022

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MARGO K. BRODIE  
United States District Judge

